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December 3, 2007

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: March 15, 2007

Case Number: TSO-0480

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to obtain an access authorization (also called a security clearance) under the provisions of 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For the reasons discussed below, I have determined that the individual's access authorization should not be granted.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In the course of processing the individual's request for access authorization, the local DOE security office (DOE Security) obtained information that raised a number of concerns about his eligibility. The areas of concern were the individual's history of alcohol use, his history of criminal activity, and his failure to inform DOE Security of certain arrests. After interviewing the individual, DOE Security determined that he had not resolved its concerns, and referred him to a DOE-sponsored psychiatrist (DOE psychiatrist) for evaluation of its alcohol-related concerns. The DOE psychiatrist evaluated the individual in November 2006, and issued a report in which he expressed his opinion that the individual suffered from alcohol abuse. As a result of the interview and the DOE Psychiatrist's report, DOE Security issued a Notification Letter to the individual. In that letter, DOE Security stated that it had substantial doubt about the individual's eligibility for access authorization based on certain derogatory information that falls within the purview of two potential disqualifying criteria, 10 C.F.R. § 710.8 (j), and (l) (Criteria J and L, respectively).<sup>1</sup>

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<sup>1</sup> Criterion J relates to information that a person has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." Criterion L relates, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is

After receiving the Notification Letter, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On March 19, 2007, the Acting Director of the Office of Hearings and Appeals appointed me the Hearing Officer in this case. At the hearing, the individual testified on his own behalf, and called as witnesses his wife and five co-workers. DOE Security called the DOE psychiatrist as its only witness. The transcript of the hearing will be hereinafter cited as "Tr." DOE Security submitted 10 exhibits into the record, which will be cited in this decision by their exhibit number. The individual submitted three exhibits into the record after the hearing.

## **II. Standard of Review**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and evidence presented by both sides in this case.

## **III. The Notification Letter and the Security Concerns**

In the Notification Letter, DOE Security cites two criteria as the bases for its concerns about the individual's eligibility for an access authorization. As for Criterion J, DOE Security first relies on the DOE psychiatrist's opinion that the individual suffers from alcohol abuse. *See* Ex. 3 (Evaluation Report). It also cites the following additional information regarding alcohol-related arrests: (1) the individual's 2001 arrest for Aggravated Driving While Intoxicated (DWI) and Open Container; (2) his 1998 arrest for DWI; (3) his 1992 arrest for felony burglary, committed after he had consumed a 12-pack of beer and a pint of whisky; (4) his 1986 arrest for felony DWI; (5) his 1984 arrest for Providing False Information to a Police Officer, committed after consuming alcohol; (6) his 1983 arrest for Theft and Driving Under the Influence (DUI); and (7) another 1983 arrest for DUI. DOE Security also relies on these additional facts: (1) although the individual stated during a May 12, 2006 personnel security interview that he intended not to drink to excess in the future, he told the DOE psychiatrist that he was intoxicated on July 4,

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subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. . . ."

2006; (2) his former wife and his parents had told him he drank too much; and (3) his doctor told him his liver enzymes were elevated due to his alcohol consumption.

With respect to Criterion L, DOE Security describes two discrete concerns. The first regards the individual's failure to provide a complete list of his arrest history, as required, when he completed his 2004 Questionnaire for National Security Positions (QNSP). On that form, he listed the three most recent arrests set forth above, but failed to report the remaining four. Its second area of concern is the individual's criminal conduct. The Notification Letter cites, as evidence of a pattern of criminal activity, the seven alcohol-related arrests listed above as well as the following information: (1) his 2001 arrest for Running a Red Light, Suspended License, and Outstanding Felony Warrant; (2) a 2001 restraining order that his former girlfriend obtained against him based on allegations of domestic violence; (3) a 1984 arrest warrant issued for his failure to pay a traffic citation fine; and (4) five arrests for shoplifting dating from 1983 through 1987.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criterion J, and his honesty, reliability and trustworthiness under Criterion L. The security concerns associated with Criterion J are as follows. First, a mental condition such as alcohol abuse can impair a person's judgment, reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at Guideline I; *Personnel Security Hearing, Case No. TSO-0357*, 29 DOE ¶ 82,975 (October 26, 2006). Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Adjudicative Guidelines at Guideline G; *Personnel Security Hearing, Case No. TSO-0442*, 29 DOE ¶ 83,057 (July 25, 2007). The security concerns associated with Criterion L revolve around the deliberate omission of relevant facts from a QNSP, which demonstrates lack of candor and dishonesty. *See* Adjudicative Guidelines at Guideline E; *Personnel Security Hearing, Case No. TSO-0295*, 29 DOE ¶ 82,922 (May 4, 2006). Additional Criterion L concerns arise from criminal activity, which calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Adjudicative Guidelines at Guideline J; *Personnel Security Hearing, Case No. TSO-0373*, 29 DOE ¶ 83,062 (July 30, 2007).

#### **IV. Findings of Fact**

The Notification Letter recites many events in which the individual participated that have raised DOE Security's concerns. The individual does not contest the facts surrounding most of these events; factual disputes, where they exist, will be addressed below.

##### **A. Alcohol Abuse**

The individual has spoken candidly about his history of alcohol-related arrests. He stated that, when he was younger, he worked in a rural setting. He would come to town only rarely, and would often drink too much and get into trouble. Tr. at 21. Alcohol also played a significant role in his 1992 burglary. After consuming 12 beers and a pint of Southern Comfort, the

individual stole a number of items from the home of a friend, with whom, he had just learned, his wife was being unfaithful. He was convicted of felony burglary and spent two years in a state penitentiary. Ex. 3 at 3; *see* Tr. at 36-37. In 1998, he was convicted of DWI and fined \$500 after being arrested on his return from a fishing trip during which he drank an undetermined number of beers. Ex. 5 (Transcript of Personnel Security Interview) at 16-22. His most recent alcohol-related arrest occurred in April 2001, when he was stopped for driving after consuming four to six beers within two to three hours, by the individual's estimate, and failing a field sobriety test. He was convicted of DWI, fined, and sentenced to perform approximately 70 hours of community service and to attend counseling. *Id.* at 8-14. The individual was excused from completing the course of treatment after about two months. *Id.* at 28-31.

In his evaluation report, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse, on the basis of the information he had before him at that time. In his report, he wrote that the individual met the criteria for the diagnosis of alcohol abuse set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR), "for much of his adult life, primarily because of his seven alcohol-related arrests." Ex. 3 at 12. The DOE psychiatrist observed that the individual continued to consume alcohol, occasionally to excess, despite the fact that his doctor had told him some six months earlier that "his abnormally elevated liver enzyme levels were due to excessive drinking." *Id.* The DOE psychiatrist also expressed his opinion that the individual had not shown that he was rehabilitated or reformed from alcohol abuse, because he had never entered into voluntary treatment for this problem and because he continued to drink. *Id.* Finally, the DOE psychiatrist stated that if the individual were to seek treatment, adequate treatment would be Alcoholics Anonymous meetings or individual substance abuse counseling at least weekly for a year, in conjunction with abstinence from alcohol for the same period. *Id.* at 12-13.

## **B. Criminal Activity**

In addition to the alcohol-related arrests and convictions described above, the individual was arrested in November 2001 for running a red light, driving with a suspended license, and being subject to an outstanding warrant. He claimed that the light was not red, that he was not aware that his license had been suspended (presumably for his DWI conviction earlier that year), and that he was not aware of the warrant, which had been issued for failure to appear in court regarding a restraining order. He served about a week of jail time for driving on a suspended license and a similar amount of time for his outstanding warrant conviction. Ex. 5 at 69-74. The restraining order underlying the warrant was ultimately lifted, and the ex-girlfriend who obtained the order submitted a document into the record of this proceeding in which she explained that she had been in error in seeking the order in the first place. Individual's Post-Hearing Submission (June 12, 2007) at 5. Information in the record reveals that there was a second outstanding warrant issued against the individual, for failure to appear in court regarding a 1998 traffic violation. The individual claimed he was unaware of the warrant, and would pay the fine. Ex. 5 at 76-77. At the hearing, he stated that he had taken care of the matter. Tr. at 34; Individual's Post-Hearing Submission (June 12, 2007) at 6. Finally, the individual was arrested five times between 1983 and 1987, in addition to the arrests and offenses discussed above. Four of these arrests were for shoplifting and the fifth was for "Failure to Comply." Notification Letter at 4. Of the five arrests, the individual could recall only one of the shoplifting arrests at the personnel security interview. Ex. 5 at 79-81.

### **C. Omissions**

On his 2004 QNSP, the individual listed as his police record only a 2001 Failure to Appear charge, his 1998 and 2001 DWI offenses and his 1992 burglary offense. When questioned during his personnel security interview about the omission of his earlier arrests from the QNSP, the individual responded that his understanding was that he was to report only arrests, charges and convictions that occurred within the past ten years. Ex. 5 at 7-8, 81-82. Consistent with that understanding, he accurately portrayed his police record from the present back through and including his 1992 burglary conviction. Ex. 6 at Item 23. He did not, however, list any of his arrests that occurred before 1992. During that interview, the individual stated that he did not intend to hide or falsify information; he was merely following the instructions he had been given by the person who provided the QNSP form to him. Ex. 5 at 82. At the hearing, the individual testified in a similar manner. He did state, however, that he understood that the ten-year limitation did not apply to the reporting of felonies, and that was why he listed his burglary conviction, even though it was 12 years old at the time he was completing his QNSP. Tr. at 79-82.

### **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that granting the individual his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

#### **A. Criterion J**

##### **1. Whether the Individual Suffers from Alcohol Abuse**

At the hearing, the DOE psychiatrist defended his diagnosis of alcohol abuse, while admitting that the individual technically met none of the DSM criteria for that diagnosis.<sup>2</sup> He stated, "Technically, the diagnosis of alcohol abuse is generally not made if there are no clinically relevant problems farther than a year away from the evaluation date." Tr. at 94. He admitted that, in the individual's case, the most recent alcohol-related event, an arrest for DWI, occurred in 2001, over five years before his evaluation. *Id.* In this case, however, the DOE psychiatrist employed his clinical judgment, rather than strictly applying the DSM criteria, to reach his diagnosis of alcohol abuse for a number of reasons. First of all, he was concerned that the individual continued to use alcohol despite the fact that his physician had told him six months earlier that his elevated liver enzyme levels were likely due to excessive drinking. *Id.* at 94-95. The DOE psychiatrist found additional support for that concern in the individual's testimony that

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<sup>2</sup> In his report, the DOE psychiatrist also cited a section of the DSM-IV-TR that addresses the use of clinical judgment. That section emphasizes that the criteria are intended for use by experienced professionals only, "to serve as guidelines to be informed by clinical judgment and are not meant to be used in a cookbook fashion." Ex. 3 at 12 (quoting DSM-IV-TR at xxxii).

drinking more than two or three beers caused him what the DOE psychiatrist characterized as “alcoholic gastritis.” *Id.* at 95. Furthermore, the individual continued to drink even after he was made aware of his employer’s concern about his drinking at the May 2006 personnel security interview, and even after he stated, during that interview, that he would stop drinking excessively in order to address the employer’s concerns. *Id.* at 96. These behaviors convinced the DOE psychiatrist that the individual’s alcohol abuse was an “active problem.” *Id.* The fact that the individual drank to intoxication on July 4, 2006, after he was aware of his employer’s concerns and after committing to stopping such behavior demonstrated to the DOE psychiatrist that the individual was “unwilling or unable to change [his] drinking patterns.” *Id.* at 97.

The DOE psychiatrist also found that the individual’s attitude toward his 2001 treatment program was “cavalier,” both in terms of poor attendance and in non-compliance with the requirement that he abstain from alcohol during the course of the treatment. *Id.* at 104. The DOE psychiatrist felt that at the time of the evaluation, the individual did not think that he had ever had a problem with alcohol, that he was not recognizing the risk that continued drinking, even moderately, could lead to intoxication and ensuing legal problems, and that he was ignoring the continuing medical problem evidenced by his elevated liver enzymes. *Id.* at 105.

The evidence in this case clearly supports the DOE psychiatrist’s diagnosis of alcohol abuse. The individual has a long and significant history of alcohol-related incidents, including five arrests for drinking while driving, and a felony burglary conviction for which he spent two years in a state penitentiary. He continues to consume alcohol, drinking in a manner he considers responsible, without the benefit of treatment or counseling. This chosen pattern of consuming alcohol has caused him to become intoxicated within the year preceding the hearing. Finally, his reliance on gastritis to control his volume of consumption is ill-placed.

## 2. Whether the Individual Has Achieved Rehabilitation

At the hearing, the individual testified about his drinking habits over the years. He pointed out that many of his alcohol-related arrests arose from “running around getting drunk and getting in trouble” when he was single. *Id.* at 21. He testified that he has cut back on his alcohol consumption since those days. *Id.* He stated that one reason for drinking less is that he did not want to risk the financial loss that might arise from decisions he made while under the influence of alcohol: “I’m older and, you know, I’ve got too much to lose now. . . . If I get in trouble I lose it all, and I don’t want to start from ground one again.” *Id.* at 29. He also testified that he had been suffering from acid reflux for the past year, and that condition limited the amount he could drink. *Id.* at 21-22. From his testimony, it appears that he no longer frequents bars; he drinks only at home, drinks only one or two beers at a time (more than that creates stomach pain that he cannot treat with acid reflux medication), and does not leave the house after he has been drinking. *Id.* at 26, 32. He further stated that the last time he was intoxicated was July 4, 2006, and the last time he drank any alcoholic beverage was about a month before the hearing, when he drank two beers. *Id.* at 30-31. When asked about his future intentions regarding alcohol consumption, he responded, “I like—you know, I like to have a beer every once in a while.” *Id.* at 31. He maintained that he had never been told that he should stop drinking. *Id.* at 32.

The individual also testified about treatment he received for his alcohol consumption. Only his 2001 DWI conviction—his fifth alcohol-related driving violation—required him to participate in

any form of treatment. Ex. 5 at 12, 20-21, 26-27. During his personnel security interview, the individual explained that the court-ordered counseling he received consisted of weekly group sessions and one-on-one meetings with a counselor over the period of two months. *Id.* at 12-15. When the interviewer asked why the counseling record revealed that the individual had been non-compliant with the court-order treatment plan, the individual replied that he attended the counseling sessions faithfully until his employer felt the effects of September 11, 2001. *Id.* at 28. He was then required to be at work for 12 to 14 hours a day, assisting in implementing security upgrades. Tr. at 27. He related that he obtained permission to stop attending his treatment program from the counselors, his probation officer, and ultimately the judge who had sentenced him. *Id.* at 28; Ex. 5 at 29-31.

In addition to his own testimony about his current level of alcohol consumption, described above, the individual also offered the testimony of his wife and five co-workers. The individual's wife testified that she has known the individual for six years and been married to him for five. Tr. at 67. She stated that he has not been arrested since she has known him, and that his drinking has tapered off significantly during the same period. *Id.* at 69-71. She testified that he was last intoxicated on July 4, 2006, and that he currently drinks one to two beers once a month, because his stomach bothers him if he drinks more than that. *Id.* at 71-72, 75-76. Finally, she expressed her opinion that her husband intends to stop drinking alcohol altogether. *Id.* at 72. The other witnesses who testified on the individual's behalf were co-workers and supervisors who had known him for at least one and a half years and as long as eight years. Two of them had spent time with the individual outside of work as well. They uniformly testified that he has never drunk alcohol or been intoxicated at work. Those who have seen him drink alcohol stated that they have never observed him consuming more than three or four beers in one setting and that he had never appeared intoxicated. *Id.* at 11, 18, 60-61.

After considering the testimony he heard during the hearing, the DOE psychiatrist expressed his opinion that the individual still faces a moderate risk of encountering alcohol-related problems in the future. *Id.* at 114. While he conceded that the individual fell into a less risky category than earlier in his life, when he was drinking more heavily, the DOE psychiatrist nevertheless believed that a number of factors contributed to the risk the individual currently faces. *Id.* His continued drinking, while usually in moderation, can lead, and has led, to heavier drinking, such as on July 4, 2006. His strong and independent nature serves him well in many aspects of his life, but also may explain his tendency to ignore the advice of others, such as those who have counseled him to stop drinking. *Id.* at 112, 116. He has employed questionable judgment in not stopping his alcohol consumption to satisfy his employer. *Id.* at 116. Finally, the DOE psychiatrist expressed his opinion that controlled drinking, such as the individual is currently practicing, is not an alternative to abstinence in his case at this time. *Id.* at 121.<sup>3</sup>

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<sup>3</sup> During the course of the hearing the individual offered to submit additional documents in support of his request for access authorization. One of those documents contained the results of laboratory tests administered on a urine sample obtained by the individual's physician on March 27, 2007. Individual's Post-Hearing Submission (June 12, 2007) at 2-4. After reviewing those results, the DOE psychiatrist submitted a statement to the record indicating that no information contained in those results changed any of the conclusions he had reached in his testimony at the hearing. E-mail from DOE Psychiatrist to DOE Counsel (June 13, 2007).

Having reviewed the DOE psychiatrist's well-considered reasoning of the facts presented in this case, I find that his diagnosis and conclusions mesh with a common-sense evaluation of the record. He pointed out that the individual has an extensive history of adverse consequences from intoxication, including five DWIs and DUIs as well as jail time. He also pointed out that, despite the individual's assertion that he has never been told to stop drinking, his physician told him that his liver enzyme levels were elevated due to alcohol. Furthermore, the individual is aware, from his own experience, that excess alcohol intake irritates his stomach beyond treatment, and he is also aware the DOE is concerned about his consumption of alcohol to the extent that his access authorization is under scrutiny. Nevertheless, he continues to drink alcohol.

Because the individual continues to consume alcohol, it is reasonable to consider whether he has the skills and support to make responsible decisions about drinking. The only treatment he has received was court-ordered and not completed. Even assuming that the treatment program was discontinued with the permission of the court, the DOE psychiatrist was of the opinion that it was insufficient to teach the individual how to handle his alcohol consumption effectively. For example, the individual was unable to recall any goals of the program. Ex. 5 at 31. Moreover, the individual testified that his wife drinks alcohol and occasionally gets intoxicated when entertaining company. Tr. at 27. Although the individual and his wife both testified that he has cut back on his consumption, I fail to see structures in place to ensure that he will do so in such a consistent manner that DOE security's concern in this area is mitigated.

Balancing the evidence presented regarding the individual's involvement with alcohol, I find negative elements in the facts before me that outweigh the positive ones. The individual contends that his alcohol-related arrests occurred long ago, when he was young and single. However, his two most recent arrests took place in 1998 and 2001, when he was in his late thirties and early forties, so it is difficult to argue that his arrests can be attributed to youth. Moreover, although it appears that he drinks more responsibly during those periods when he is married, I am not convinced that the external influence of his wife is sufficient to mitigate the legitimate concern that the individual may become intoxicated in the future, particularly in light of the evidence that the individual's wife drinks alcohol, and at times to excess. *See Personnel Security Hearing, Case No. TSO-0012*, 28 DOE ¶82,918 (May 23, 2003) (external controls not sufficient mitigation).

While it is positive that the individual intends to drink responsibly, and in fact has not been intoxicated since July 4, 2006, I am not convinced that he has the tools to succeed with that intention. Of primary concern to me is the individual's frame of mind regarding alcohol consumption. First of all, I note an inconsistency in the evidence, in that the individual's wife testified that the individual wants to stop drinking altogether. Tr. at 72, 74. To the contrary, the individual testified that he does not see the need to stop, because he believes he can control his drinking. This discrepancy indicates that the individual has not been straightforward with his wife, and serves as evidence that she may be even less able to support him as he strives to control his drinking. As for being able to control his drinking, he disagrees with the DOE psychiatrist, and acknowledges that disagreement. *Id.* at 87-88. Furthermore, he disagrees with the DOE psychiatrist's opinion that he needs additional treatment or counseling to achieve his goal of drinking responsibly. *Id.* at 29-30. Notwithstanding the testimony regarding the individual's strength of character, I cannot find sufficient evidence in the record to support the individual's



assertion that he can achieve responsible drinking when faced with a medical expert's opinion and diagnosis. By choosing not to participate in any form of treatment or counseling, the individual may be less likely on his own to avoid the pitfalls that alcohol has placed before him in the past. In the end, the risk that he will resume drinking to intoxication is simply too great to entrust him with access authorization. *See Personnel Security Hearing, Case No. TSO-0286*, 29 DOE ¶ 82,945 (July 24, 2006) (no mitigation where absence of treatment in conjunction with failure to acknowledge alcohol problem).

For all the reasons set forth above, I find that the individual has not mitigated the security concerns associated with his alcohol abuse under Criterion J.

## **B. Criterion L**

### **1. Omission of Information from the QNSP**

Failing to provide a full and accurate accounting of one's personal history on a QNSP is a prime example of conduct that tends "to show that the individual is not honest, reliable, or trustworthy," raising a legitimate concern about eligibility for access authorization. *See Personnel Security Hearing, Case No. TSO-0512*, 29 DOE ¶ \_\_\_\_ (November 1, 2007) (and cases cited therein) (DOE relies on holders of access authorization to be honest and trustworthy). In the present case, however, the individual has presented evidence that he believed the person who provided him the QNSP form had instructed to limit his responses to most of the questions on the QNSP to the ten-year period preceding the date of his completion of the form. Ex. 5 at 82; Tr. at 80.<sup>4</sup> He understood, however, that he was to report all felonies, regardless of age. He adhered strictly to those rules in his responses. I found him to be a credible witness, giving straightforward answers even when they were not in his interest. His candid nature was demonstrated by the fact that the information he omitted from the QNSP was much less significant than the information he included—not only were those offenses older, but they were less severe in character. Nevertheless, despite this candor, the individual exercised poor judgment when he relied on oral instructions that clearly contradicted the written instructions on the QNSP. Therefore, even if I accept his testimony regarding this matter, I cannot find that the individual has successfully mitigated DOE Security's concern with respect to his omissions of information from his 2004 QNSP.

### **2. Criminal Activity**

Additional derogatory information that raises concerns about the individual's honesty, reliability and trustworthiness flows from two categories of arrests and offenses: those in which alcohol was a factor and those in which it was not. The alcohol-related arrests have been discussed above. These incidents demonstrate that the individual's judgment and reliability have been questionable in the past. Because I have concluded that DOE Security's concerns regarding his alcohol consumption have not been mitigated, I must correspondingly conclude that his judgment and trustworthiness with respect to alcohol-related arrests remain concerns under

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<sup>4</sup> The individual did not identify the person who instructed him to limit his responses to the past ten years. The individual has therefore not met his burden of establishing that this person was an authorized representative of the security program, on whom it was reasonable to rely for the accuracy of the instructions.

Criterion L as well. *See Personnel Security Hearing, Case No. TSO-0373*, 29 DOE ¶ 83,062 (July 30, 2007).

DOE Security cites a number of additional incidents, in which alcohol was not apparently a factor, that nevertheless raise further questions regarding the individual's honesty, reliability and trustworthiness. The individual has presented mitigating evidence regarding some of the more recent incidents. For example, I am convinced, by the consistency of the individual's statements made during his personnel security interview, his testimony at the hearing, and the explanation his ex-girlfriend provided, that the restraining order was most likely secured on an incorrect determination that the individual had engaged in domestic violence. I am also convinced that the individual is trying to keep himself out of trouble. Nevertheless, much of his testimony demonstrates a lack of attention to the consequences of his offenses. For example, although he paid the fines associated with an old traffic ticket after he was made aware of it, it appears that the fines went unpaid for eight years because he forgot to pay them. Ex. 5 at 77. He also testified that he was not aware that his license had been suspended after his DWI conviction, nor was he aware that he had had a court date regarding the restraining order. *Id.* at 70, 71. Whether due to lack of understanding or lack of concern, his ignorance of these matters does not mitigate DOE Security's concerns regarding the individual's non-alcohol-related arrests and offenses. Even if I were to discount the individual's numerous arrests from the 1980s as youthful indiscretions, I must still confront his unreliability in complying with rules and regulations, which leaves a question in my mind as to whether he is willing or able to abide by rules and regulations that govern handling of classified material. It is therefore my opinion that the individual has not mitigated all of the security concerns that DOE Security has raised under Criterion L.

## **VI. Conclusion**

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(j) and (l) in determining that it could not grant the individual's access authorization without resolving concerns raised by derogatory information it received regarding the individual. For the reasons I have described above, I find that the individual has not sufficiently mitigated the security concerns raised in this case. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be granted. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: December 3, 2007